



28 AUG 2007

John S. Pratt
Kilpatrick Stockton, LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

In re Application of	:	
KYONO	:	
Application No.: 10/520,607	:	DECISION ON PETITION
PCT No.: PCT/JP04/00089	:	
Int. Filing Date: 09 January 2004	:	UNDER 37 CFR 1.10(d)
Priority Date: 28 January 2003	:	
Atty. Docket No.: 44471/309937	:	
For: POWER SUPPLY DEVICE	:	

This is a decision on applicant's "REQUEST TO CORRECT FILING DATE" filed 19 January 2007 in the United States Patent and Trademark Office (USPTO). The request is being treated as a petition under 37 CFR 1.10. No petition fee is required.

BACKGROUND

On 09 January 2004, applicant filed international application PCT/JP04/00089 which claimed priority to an earlier Japanese application filed 28 January 2003. A copy of the International Application was forwarded to the United States Patent and Trademark Office (USPTO) from the International Bureau (IB) on 12 August 2004. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 28 July 2005.

On 06 January 2005, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an English translation of the international application as filed; an executed declaration of the inventor; an assignment document for recording and an Application Data Sheet.

On 16 November 2005, applicant was mailed a "Notification of Acceptance" (Form PCT/DO/EO/903) indicating a 371 date of 06 January 2005.

On 19 January 2007, applicant filed the present petition and request for corrected filing receipt indicating that the papers at issue, satisfying the 35 U.S.C. 371 requirements, were filed 07 January 2007.

DISCUSSION

37 CFR 1.10(a) states:

(1) Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS.

(2) The date of deposit with USPS is shown by the "date in" on the "Express Mail" label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. See § 1.6(a).

A review of the Express Mail label for the subject mailing, EV707248153US shows a "date-in" date of "1-6-05." Thus, the USPTO did correctly accorded a 371 date of 06 January 2005 pursuant to 37 CFR 1.10(a). 37 CFR 1.10(d) provides relief in cases where applicant can show an error or discrepancy between the date of deposit and the date written in as the "date-in" date by the USPS.

37 CFR 1.10(d) states:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last schedule pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Applicant has satisfied items 1 and 2 above.

Regarding item 3, applicant has not provided sufficient evidence to satisfy item 3. Specifically, applicant has only provided a copy of the Express Mail mailing label. While, this

label contains a USPS barrel stamp with a date of 07 January 2005, the same label has a "date-in" date of "1-6-05." Thus, the USPS information is in conflict and therefore does not conclusively show that the date-in date is incorrect.

For the reasons above, it is not possible to grant applicant's petition under 37 CFR 1.10(d) at this time.

CONCLUSION

For the reasons stated above, applicant's petition under 37 CFR 1.10(d) is **DISMISSED**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(d)" Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Derek A. Putonen
Attorney Advisor
Office of PCT Legal Administration
Tel: (571) 272-3294
Fax: (571) 273-0459